**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

J.D.H., et al.,

Plaintiffs,

v.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT; SHERIFF DOUGLAS GILLESPIE (individually and in his official capacity as Sheriff of the Las Vegas Metropolitan Police Department); LAS VEGAS METROPOLITAN POLICE DEPARTMENT OFFICER J. BARKER (in his individual capacity); and LAS VEGAS METROPOLITAN POLICE DEPARTMENT OFFICER M. PURCARO (in his individual capacity),

Defendants.

Case No. 2:13-cv-01300-APG-NJK

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS**

(Dkt. # 13)

Defendants move to dismiss the complaint. [Dkt. #13.] For the reasons set forth below, I grant the motion as to plaintiffs' Second, Third, Fifth, Sixth and Eighth Causes of Action, and denies the motion as to plaintiffs' First, Fourth, and Seventh Causes of Action. All claims against Defendant Sheriff Douglas Gillespie are dismissed.

## I. Background

Plaintiff J.D.H. is a minor girl, and plaintiff Maria is her mother. This case arises from an incident in which a Chevrolet Avalanche ran over J.D.H.'s foot. Taking plaintiffs' facts as true for the instant motion, the relevant facts are set forth below. [Dkt. #1 ¶¶ 29–115]

J.D.H. was playing outside her house with other children when an ice cream truck arrived on the street. She and the other children crossed the street to the ice cream truck, which had flashing lights and a stop sign attached while it served the children. J.D.H.'s father, Inocente, was

driving in his car on the same street, headed back towards the house. He stopped behind the ice cream truck and waited to turn left into his driveway.

After buying ice cream, J.D.H. and her sister stood in front of the ice cream truck, waiting to cross the street back towards the house. A young man (the "driver") was driving the Chevrolet Avalanche with a female passenger (the "passenger"). The Chevrolet came from behind the father's car at a high rate of speed, which plaintiffs estimate to be around twice the posted speed limit. Instead of stopping behind Inocente's car, the Chevrolet passed it on the right and then passed the ice cream truck on the left. While passing the ice cream truck, the Chevrolet ran over J.D.H.'s foot, knocking her to the ground and bloodying her foot.

The Chevrolet stopped, and its occupants exited the vehicle. Inocente got out of his vehicle and went to J.D.H. The driver apologized, but the passenger became aggressive and blamed J.D.H. for the accident. One of the other children fetched Maria. Maria called 9-1-1, but was upset and passed the telephone to Inocente. Inocente indicated he was not fluent in English, and the 9-1-1 operator connected him with a Spanish-speaking interpreter.

Other people gathered at the scene. After Inocente called the police, the Chevrolet drove away. Officers Barker and Purcaro arrived. The officers could not understand Inocente because neither officer spoke Spanish, and the officers did not request an interpreter. The Chevrolet driver and passenger returned to the scene on foot, and the passenger spoke with the officer in English. She initially told Officer Barker that she had been driving, but the driver eventually admitted he had been. The officers learned that the driver did not have a valid license, but they did not verify any of the driver's information or check the Chevrolet's registration. When Maria and Inocente asked the officers to get the driver's information, the officers told them they could not have it, and that the accident had been the parents' fault.

Tempers escalated, and the passenger began yelling at Maria in Spanish; Maria responded in Spanish. Maria was carrying the injured J.D.H. in her arms. Officer Barker approached Maria and pushed her with his forearm, causing her to take three steps back. Officer Barker told Maria

to "shut up," and that the accident was her fault. Maria cried and returned with J.D.H. to their residence.

Maria and J.D.H. were helped into an ambulance and left the scene. Inocente's nephew began to interpret for Inocente to the officers. Inocente asked for the driver's information from the officers, but the officers refused to provide the information, and prohibited Inocente from obtaining that information. The officers did not prepare a report, and told Inocente that if they wrote a report it would show J.D.H. at fault. Officer Barker mocked the family's Hispanic accent. The driver and passenger left without giving any information to Inocente or the officers.

Plaintiffs allege that the officers treated J.D.H. and Maria differently they treat non-Hispanics, and because they could not speak English. [Dkt. #1 ¶¶ 87, 88.] Plaintiffs allege that officers check, collect, report, and provide drivers' information in accidents that involve non-Hispanic and English-speaking children. Nevada law requires officers at the scene of an accident to check the registration of vehicles involved and to file a report with the Department of Motor Vehicles ("DMV"). Nevada law also requires drivers involved in accidents to provide information to the other persons involved. [Dkt. #1 ¶¶ 133–34.] Plaintiffs allege the officers violated those state laws, and that the officers violated the Plaintiffs' Constitutional rights.

## II. Legal Standards

### A. Motion to Dismiss

A properly pleaded complaint must provide a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands more than "labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Factual allegations must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. To survive a motion to dismiss, a complaint must "contain[] enough facts to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 696 (internal quotation marks and citations omitted).

District courts must apply a two-step approach when considering motions to dismiss. *Id.* at 679. First, the court must accept as true all well-pleaded factual allegations and draw all reasonable inferences from the complaint in the plaintiff's favor. *Id.*; *Brown v. Elec. Arts, Inc.*, 724 F.3d 1235, 1247–48 (9th Cir. 2013). Legal conclusions, however, are not entitled to the same assumption of truth even if cast in the form of factual allegations. *Iqbal*, 556 U.S. at 679; *Brown*, 724 F.3d at 1248. Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice. *Iqbal*, 556 U.S. at 678.

Second, the court must consider whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 679. A claim is facially plausible when the complaint alleges facts that allow the court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 663.

**B. Leave to Amend**

Courts should freely grant leave to amend when "justice so requires." Fed. R. Civ. P. 15(a)(2). In so determining, courts consider: "(1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment, and (5) whether plaintiff has previously amended his complaint." *Sisseton–Wahpeton Sioux Tribe of Lake Traverse Indian Reservation, North Dakota and South Dakota v. United States*, 90 F.3d 351, 355 (9th Cir. 1996). "Rule 15's policy of favoring amendments to pleadings should be applied with extreme liberality." *United States v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981) (internal quotation marks omitted). However, futility of amendment can by itself justify the denial of a motion for leave to amend. *See, e.g., Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995).

**C. Nevada Law Regarding Driver Information**

NRS 484E.060(1) requires officers at the scene of a car accident to, among other things, check the validity of each vehicle's registration. NRS 484E.110 requires officers to prepare a report in the event of a vehicle accident resulting in bodily injury, and to submit a copy of this report to the Department of Public Safety, who in turn shall submit a copy to the Department of Motor Vehicles. Finally, NRS 484E.030 requires the driver of any vehicle involved in an

accident resulting in injury to provide personal information, a driver's license, and the vehicle's registration upon request.

## III. Analysis

### A. Claims Against Sheriff Gillespie

As an initial matter, Sheriff Gillespie is not a proper defendant in this case, and he is dismissed from all counts. Individuals who work for governmental entities can be named as defendants in both their official and personal capacities. However, suing an individual in his official capacity is the equivalent of suing the entity of which he is a part. *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir. 1991). Dismissal of an official is proper where a plaintiff names as defendants both the official in his official capacity and the entity. *Center for Bio-Ethical Reform, Inc. v. Los Angeles Cnty. Sheriff Dep't*, 533 F.3d 780, 799 (9th Cir. 2008). Plaintiffs have named as a defendant Las Vegas Metropolitan Police Department ("LVMPD"), so Sheriff Gillespie in his official capacity is a redundant defendant and should be dismissed.

Additionally, Plaintiffs have not alleged that Sheriff Gillespie participated in or directed the alleged violations, or that he knew of the violations and failed to act to prevent them. *See Maxwell v. County of San Diego*, 708 F.3d 1075, 1086 (9th Cir. 2013). Sheriff Gillespie's authority over operations at LVMP does not alone make plausible his personal participation in the alleged violations. Thus, the personal-capacity claims against Sheriff Gillespie are also dismissed. *See Iqbal*, 556 U.S. at 679. However, I grant Plaintiffs leave to file an amended complaint with additional factual allegations against Sheriff Gillespie in his individual capacity, should such facts exist.

### B. First Cause of Action: Equal Protection

To state a claim for violation of equal protection, a plaintiff must allege that: (1) the defendant treated the plaintiff differently from others similarly situated; (2) this unequal treatment was based on an impermissible classification; (3) the defendant acted with discriminatory intent in applying this classification; and (4) the plaintiff suffered injury as a result of the discriminatory classification. *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) ("must show that the

defendants acted with an intent or purpose to discriminate against plaintiff based on membership in a protected class"); *Moua v. City of Chico*, 324 F. Supp. 2d 1132, 1137 (E.D. Cal. 2004); *Van Pool v. City & Cnty. of San Francisco*, 752 F. Supp. 915, 927 (N.D. Cal. 1990) (must prove purposeful discrimination by demonstrating that plaintiff "receiv[ed] different treatment from that received by others similarly situated," and that the treatment complained of was under color of law).

Plaintiffs' Complaint pleads the first and fourth elements. Plaintiffs allege that LVMPD checks, collects, reports, and provides information regarding accidents. Plaintiffs suggest that LVMPD officers usually do not prohibit parties to an accident from exchanging driver information. They bolster this assertion with references to Nevada statutes that require drivers to exchange such information. According to the Complaint, Officers Barker and Purcaro did not check, collect, report, or provide the required information. Further, they actively prevented Plaintiffs from obtaining the Chevrolet driver's information. Plaintiffs suffered injury because they were unable to bring suit against the driver for J.D.H.'s medical expenses. These allegations make plausible that the officers treated Plaintiffs differently from others similarly situated, and that Plaintiffs suffered damages as a result.

Harder to determine is whether Plaintiffs have sufficiently pleaded the second and third elements of an equal protection violation. Plaintiffs must plead facts that make plausible a discriminatory animus, and that the different treatment was based on that animus. Plaintiffs allege that Defendants did not adequately communicate with Plaintiffs or any Spanish-speaking witness at the scene. [Dkt. #1 ¶68–74.] Additionally, plaintiffs allege that Officer Barker was aggressive and mocked their Hispanic accents. [Dkt. #1 ¶106.] These allegations, coupled with the officers' apparent disregard for Nevada statutes, are more than bald legal conclusions. At this stage, plaintiffs are not required to prove the entirety of their case. Plaintiffs have sufficiently pleaded the elements of an equal protection violation so as to survive the instant motion to dismiss.

**C. Fourth Cause of Action: Title VI**

Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. "To state a claim for damages under 42 U.S.C. § 2000d et seq., a plaintiff must allege that (1) the entity involved is engaging in racial discrimination; and (2) the entity involved is receiving federal financial assistance." *Fobbs v. Holy Cross Health Sys. Corp.*, 29 F.3d 1439, 1447 (9th Cir. 1994) (citations omitted), *overruled on other grounds by Daviton v. Columbia/HCA Healthcare Corp.*, 241 F.3d 1131 (9th Cir. 2001). Additionally, a private individual making a claim under Title VI must allege intentional discrimination. *Alexander v. Sandoval*, 532 U.S. 275, 280–81 (2001) ("[Section] 601 prohibits only intentional discrimination.") (citing *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 287 (1978)). Language-based discrimination can constitute a form of national-origin discrimination under Title VI. *Colwell v. Dep't of Health & Human Servs.*, 558 F.3d 1112, 1116–17 (9th Cir. 2009) (citing *Lau v. Nichols*, 414 U.S. 563, 568 (1974) *abrogated on other grounds by Sandoval*, 532 U.S. 275 (2001)) ( "discrimination against LEP individuals was discrimination based on national origin in violation of Title VI").

Plaintiffs allege that the LVMPD is a federally-assisted program. [Dkt. #1 ¶ 160]. They allege that Defendants' failure to use an interpreter denied them meaningful access to LVMPD services. [*Id.* at ¶ 163.] Finally, they allege that the officers intentionally denied them meaningful access to LVMPD services because of their limited English proficiency. [Dkt. #1 at ¶¶ 160, 164.] These allegations make out a plausible Title VI claim so as to survive the instant motion to dismiss. *See Almendares v. Palmer*, 284 F. Supp. 2d 799 (N.D. Ohio, 2003).

**D. Second Cause of Action: Due Process**

Plaintiffs claim that the officers' actions deprived them of the driver's information and a potential lawsuit against the driver, and that this deprivation constitutes a due process violation. Plaintiffs contend that they had a property interest in the driver's information and lawsuit.

To state a due process claim, a plaintiff must allege that "a state actor deprived [the plaintiff] of a constitutionally protected life, liberty, or property interest." *Shanks v. Dressel*, 540 F.3d 1082, 1087 (9th Cir. 2008). Thus, Plaintiffs "must, as a threshold matter, establish that [they] had a property right in [their] position." *See Koepping v. Tri-County Metro. Transp. Dist. of Or.*, 120 F.3d 998, 1005 (9th Cir. 1997); *O'Connor v. Pierson*, 426 F.3d 187, 196 (2d Cir. 2005) ("To determine whether a plaintiff was deprived of property without due process of law in violation of the fourteenth Amendment, [the court] must first identify the property interest involved."). To "have a property interest in a benefit, a person … must have more than an abstract need or desire [and] more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005).

The Ninth Circuit has not addressed whether the victim of an automobile accident has a property interest in information related to the accident and its potentially resulting lawsuit. *Austin v. City of Montgomery* is an unpublished Eleventh Circuit case that dealt with similar facts. *Austin* held that an Alabama statute that requires law enforcement officers to file a report after investigating a motor vehicle accident did not create a due process-protected property interest in the report. 353 Fed. Appx. 188, 190–91 (11th Cir. 2009) (not published). In *Austin*, a driver involved in an accident sued the city when a police officer responding to the scene failed to interview witnesses or file a written report, as required by Alabama statute. *Id.* at 189. The driver alleged that this failure caused him to lose a subsequent lawsuit against the other driver in the accident. *Id.* Affirming the district court's dismissal of the driver's due process claim, the Eleventh Circuit held that the statute "imposes a purely procedural requirement upon an investigating law enforcement officer to file a report … and does not create any sort of constitutionally protected liberty or property interest." *Id.* at 191.

*Stevens v. Webb*, a case from the Eastern District of New York, dealt with a similar claim. 2014 WL 1154246 (E.D.N.Y. 2014). In *Stevens*, a husband sued New York City, the NYPD, and several NYPD officers for the officers' failure to preserve or record evidence relating to a car accident in which his wife was killed by a drunk driver. *Id.* at *2. The husband argued that the

NYPD's failure to investigate the accident in accordance with New York's vehicle and traffic laws resulted in the loss of evidence. *Id.* at *3. The court rejected his procedural due process claim, holding that the relevant state laws, which require police to report accidents that result in injury, do "not convey an individual entitlement upon the victims of motor vehicle accidents," but rather "to the public generally." *Id.* at *5–6 (quoting *Harrington v. County of Suffolk*, 607 F.3d 31, 35 (2d Cir. 2010) (state traffic law was not sufficiently mandatory to create a constitutionally protected property interest, and obligations ran to the public rather than to the individual)).

In the absence of any pertinent case law cited by Plaintiffs, I find these two cases persuasive. I decline to create a property interest in another driver's information or a potential lawsuit against that driver. Plaintiffs cite Nevada statutes that require they be given this information. But similar to the statutes requiring police to file accident reports in *Austin* and *Stevens*, the Nevada statutes convey an entitlement upon the public generally, and not upon the plaintiffs individually. The defendant officers' alleged conduct may have been improper and irresponsible, but it does not rise to the level of a constitutional deprivation of due process. Accordingly, Plaintiffs' Second Cause of Action is dismissed with prejudice.

**E. Third Cause of Action: Excessive Force; Fifth Cause of Action: Battery; Sixth Cause of Action: Assault**

To state an excessive force claim, a plaintiff must allege that the force used was objectively unreasonable under the circumstances. *Green v. City & Cnty. of San Francisco*, 751 F.3d 1039, 1049 (9th Cir. 2014) ("Under the Fourth Amendment, law enforcement may use objectively reasonable force."). Use of force must be judged by the totality of the circumstances based upon facts known to the officer at the time. *Graham v. Connor*, 490 U.S. 386, 396 (1990) ("Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake."). Furthermore, "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense,

uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Id.* at 396–97. "[N]ot every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, constitutes excessive force." *Carter v. City of Fresno*, 2013 WL 3766525, at *3 (E.D. Cal. July 16, 2013) (citing *Graham*, 490 U.S. at 396–97) (dismissing excessive force claim against officer who made hostile remarks and poked a man in the chest, causing him to step back a few feet but not injuring him) .

To state a battery claim under Nevada law, a plaintiff must allege that (1) the actor intended to cause harmful or offensive contact, and (2) such contact did occur. *Burns v. Mayer*, 175 F. Supp. 2d 1259, 1269 (D. Nev. 2001) (citing Restatement (Second) of Torts, §§ 13, 18 (1965)). To state an assault claim under Nevada law, a plaintiff must allege that the defendant (1) intended to cause harmful or offensive physical contact or an imminent apprehension of such contact, and (2) put the victim in apprehension of such contact. *Sandoval v. Las Vegas Metro. Police Dep't*, 854 F. Supp. 2d 860, 882 (D. Nev. 2012) (citing Restatement (Second) of Torts § 21 (1965)) (reversed on other grounds). Like an excessive force claim, battery and assault claims against police officers also require proof of unreasonable force. *Carter*, 2013 WL 3766525 at *3. Thus, to sustain claims of excessive force, battery, or assault, Plaintiffs' allegations must establish that Officer Barker's use of force was objectively unreasonable under the circumstances.

Plaintiffs' allegations do not establish that Officer Barker's use of force was objectively unreasonable. Plaintiffs allege that Officer Barker pushed Maria with his forearm, causing her to take three steps back. [Dkt. #28 ¶ 95.] This use of force was objectively reasonable under the circumstances. *See Carter*, 2013 WL 3766525 at *3 (chest pokes were not unreasonable); *see also Graham*, 490 U.S. at 397 (the reasonableness inquiry does not consider an officer's "underlying intent or motivation"). Officer Barker intervened in a yelling match by pushing Maria with his forearm. [*Id* ¶¶ 92–95.] Like in Carter, the push caused Maria to take a few steps back, but did not physically injure her. No reasonable jury could find that Officer Barker's push was objectively unreasonable under these circumstances. Accordingly, Plaintiffs' Third, Fifth, and Sixth Causes of Action are dismissed with prejudice.

**F. Seventh Cause of Action: IIED**

To state a claim for intentional infliction of emotional distress in Nevada, a plaintiff must allege: "(1) extreme and outrageous conduct with either the intention of, or reckless disregard for, causing emotional distress, (2) … severe or emotional distress, and (3) actual or proximate causation." *Olivero v. Lowe*, 995 P.2d 1023, 1025–26 (Nev. 2000) (citing *Star v. Rabello*, 625 P.2d 90, 91–92, 125 (Nev. 1981). Conduct is extreme and outrageous if it falls "outside all possible bounds of decency and is regarded as utterly intolerable in a civilized community." *Maduike v. Agency Rent-A-Car*, 953 P.2d 24, 26 (Nev. 1998). The Court determines whether the defendant's conduct may be regarded as extreme and outrageous so as to permit recovery, but, where reasonable people may differ, the jury determines whether the conduct was sufficiently extreme and outrageous to result in liability. *Chehade Refai v. Lazaro*, 614 F.Supp.2d 1103, 1121 (D.Nev.2009); Restatement (Second) of Torts, § 46, cmt.h. (1965).

Reading the facts in the light most favorable to Plaintiffs, and drawing all reasonable inferences in their favor, Plaintiffs have pleaded all of the elements of an IIED claim. Plaintiffs allege that Officer Barker intentionally or recklessly caused Plaintiffs "severe emotional distress by his extreme and outrageous conduct of pushing [Maria] while holding [J.D.H.], who was injured." [Dkt. #28 ¶ 194.] Plaintiffs also allege that Officer Barker's conduct was extreme and outrageous when he "yelled at [Maria] to 'shut up' and told her that it was her fault that the [a]ccident occurred." [*Id.* at ¶ 96]. I decline at this stage in the proceedings to "determine, considering prevailing circumstances, contemporary attitudes and [the appellant's] own susceptibility, whether the conduct in question constituted extreme outrage." *Branda v. Sanford*, 637 P.2d 1223, 1227 (Nev. 1981) (suit alleging slander and intentional infliction of emotional distress resulting from the respondent's verbal abuse of a patron in a casino). I similarly decline at this stage in the proceedings to assess the severity of Plaintiffs' distress. *Samuels v. We've Only Just Begun Wedding Chapel, Inc.*, 2014 WL 1302047 (D. Nev. 2014). Thus, Plaintiffs' Seventh Cause of Action survives the instant motion to dismiss.

**G. Eighth Cause of Action: NEID**

In Nevada, NIED claims may be asserted only by bystander-plaintiffs. *Grotts v. Zahner*, 989 P.2d 415, 416 (Nev. 1999). Nevada "did not expand the NIED cause of action itself to include an alternative to IIED where the defendant's extreme and outrageous conduct was merely negligent." *Kennedy v. Carriage Cemetery Serv., Inc.*, 727 F. Supp. 2d 925, 935 (D. Nev. 2010) (discussing *Shoen v. Amerco, Inc.*, 896 P.2d 469, 477 (Nev. 1995)). Instead, "emotional distress can be an element of the damage sustained" in a negligence action by a victim-plaintiff. *Shoen*, 896 P.2d at 477. In *Kennedy*, this court stated:

> [T]o recover parasitic damages for emotional harm based on a simple negligence claim, a plaintiff must prove cognizable harm separate from the emotional harm itself, whereas a putative NIED claim that mirrors an IIED claim in all aspects but mens rea would permit recovery based on emotional harm alone. No such cause of action exists except in Hawai'i.

727 F. Supp. 2d at 935. Yet, this is exactly how Plaintiffs have pleaded their NIED claim. [Dkt. #28 at ¶ 25 ("BARKER negligently caused MARIA and [J.D.H.] to suffer severe emotional distress by his extreme and outrageous conduct of pushing MARIA while she held [J.D.H.], who was injured, in her arms.") They cannot recover based on an NIED claim that merely mirrors their IIED claim in all aspects but mens rea.

Plaintiffs' NIED claim is more properly a straightforward negligence claim with emotional distress damages. However, they have not alleged a cognizable harm separate from their alleged emotional harm. Thus, Plaintiffs fail to state damages that support such a negligence claim. Accordingly, Plaintiffs' Eighth Cause of Action is dismissed with prejudice.

IT IS THEREFORE ORDERED THAT Defendants' Motion to Dismiss is GRANTED in part and DENIED in part. Plaintiffs' Second, Third, Fifth, Sixth and Eighth Causes of Action are dismissed. Plaintiffs may proceed with their First, Fourth, and Seventh Causes of Action.

IT IS FURTHER ORDERED THAT all claims against Sheriff Douglas Gillespie are dismissed. Plaintiffs shall have 30 days from entry of this Order to file a Second Amended

Complaint asserting factual allegations and claims against Sheriff Gillespie in his individual capacity, should such facts exist.

DATED THIS 1st day of August, 2014.

ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE